

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Petition of the United States Telecom Association)	RM-11293
For a Rulemaking to Amend Pole Attachment Rate)	
Regulation and Complaint Procedures)	

**Comments of the
National Telecommunications Cooperative Association**

The National Telecommunications Cooperative Association (NTCA)¹ hereby submits these Comments in support of the Petition for Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures (Petition) submitted by the United States Telecom Association (USTelecom).² NTCA agrees with USTelecom that a rulemaking proceeding to amend existing rules governing pole attachment rates, terms, and conditions as set forth in 47 C.R.R. §§ 1.1401, 1.1402, 1.1404, 1.1409 is appropriate. The rules as currently written and enforced do not fully implement the Communications Act of 1934, as amended (Act), and unreasonably discriminate against incumbent local exchange carriers (ILECs).

NTCA agrees with USTelecom that the right to “just and reasonable” pole attachment rates, terms, and conditions under Section 224(b) should not and was never intended to be exclusive of

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² Petition of the United States Telecom Association For a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures, RM-11293 (filed Oct. 11, 2005) (USTelecom Petition).

ILECs. Section 224(b)(1) states that the Commission “shall regulate the rates, terms and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions.”³ “Pole attachment” is defined in Section 22(a)(4) as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”⁴ The Act defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public.”⁵ ILECs offer telecommunications for a fee directly to the public and are thus “providers of telecommunications service” for whom the protections of 224(b) were intended.

While ILECs do not have the access rights of CLECS and cable television systems, they are entitled to the same just and reasonable rates, terms and conditions for pole attachments. The Commission’s current rules, however, are inconsistent with the Congressional mandate. ILECs lack an express procedural remedy for unjust and unreasonable pole attachment rates, terms, and conditions. As USTelecom asserts, the current rules are generally viewed as denying ILECs a remedy against unreasonable pole attachment provisions. Without a remedy or complaint procedure, ILECs are without protection and are forced to pay whatever rates the pole owners request.

Given the current reading of the Commission’s rules, utilities may charge ILECs significantly more than their CLEC competitors for the same amount of space on a pole. ILECs may be subject to unreasonably high rates, bearing no relation to cost or space. This outcome is not only

³ 47 U.S.C. § 224(b)(1).

⁴ 47 U.S.C. § 224(a)(4).

⁵ 47 U.S.C. § 153(46).

unfair and harmful to competition, it also disproportionately harms small and rural carriers with limited financial resources.

Therefore, NTCA agrees with USTelecom that a rulemaking proceeding is necessary to address the issues. The Commission's rules should be amended to clarify that: (1) an incumbent local exchange carrier, is a "provider of telecommunications service" under 47 U.S.C. § 224(a)(4), and is entitled to "just and reasonable" pole attachment rates, terms, and conditions when attaching to poles of other utilities; (2) under Section 1.1404 of the Commission's rules, an ILEC may bring a complaint against a utility for unjust or unreasonable pole attachment rates, terms, and conditions; and (3) the formula set forth in § 1.1409(e)(2) for computing pole attachment rates for "any telecommunications carrier" is also an appropriate default to apply in rate disputes involving all "providers of telecommunications service," including ILECs.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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December 2, 2005

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in RM-11293, Report No. 2737 was served on this 2nd day of December 2005 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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